



December 21, 2001

Mr. J. Robert Giddings
Office of General Counsel
The University of Texas System
201 West 7th Street
Austin, Texas 78701-2981

OR2001-6070

Dear Mr. Giddings:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155987.

The University of Texas at Austin (the "university") received a request for information relating to evaluations of high school football players. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. We have considered the exceptions you raise and have reviewed the representative sample of information you submitted.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You inform this office that Rule 13.11 of the National Collegiate Athletic Association (the "NCAA") expressly prohibits the university from releasing details regarding a high school prospect, including the athletic ability or possible contribution to the university team of a prospect, the coach's evaluation or rating of the prospect, or the likelihood of the prospect signing with the university. You provided a copy of Rule 13.11, "Publicity." Rule 13.11.2 provides in part:

13.11.2. Comments Before Signing. Before the signing of a prospect to a National Letter of Intent or an institution's written offer of admission and/or financial aid, a member institution may comment publicly only to the extent

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the university to withhold any responsive information that is substantially different from the submitted information. See Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

of confirming its recruitment of the prospect. The institution may not comment generally about the prospect's ability or the contribution that the prospect might make to the institution's team; further, the institution is precluded from commenting in any manner as to the likelihood of the prospect's signing with that institution.

See also Open Records Decision No. 462 at 7 (1987) (member institution is answerable to NCAA for violations of its rules by student athletes and personnel). You also point out that section 9 of Title III of the General Appropriations Act requires the university to make "rules and adjustments [that] specifically prohibit violation of National Collegiate Athletic Association ("NCAA") or other governing body rules with respect to recruitment of athletes."² You advise us that policies 101, 102, and 508 of the university's Policies and Procedures Manual, Department of Intercollegiate Athletics for Men, specifically mandate adherence to NCAA rules and regulations. Having considered your arguments and the documentation you submitted, we conclude that you have shown that the university is prohibited by law from releasing the requested information. Therefore, the requested information must be withheld from disclosure under section 552.101 of the Government Code as information made confidential by law. *See* Open Records Decision No. 584 at 3 (1991) (provisions of law that prohibit release of information bring it within scope of section 552.101). As we are able to make this determination under section 552.101, we need not consider your arguments under section 552.104.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

²*See* Act of May 24, 2001, 77th Leg., R.S., S.B. 1 (as modified by Act of May 27, 2001, 77th Leg., R.S., H.B. 2879; Act of May 28, 2001, 77th Leg., R.S., H.B. 3343; Veto Message of Gov. Perry, Tex. S.B. 1, 77th Leg., R.S. (2001); Act of May 24, 2001, 77th Leg., R.S., H.B. 1333; Act of May 23, 2001, 77th Leg., R.S., H.B. 2914; and Act of May 26, 2001, 77th Leg., R.S., S.B. 736).

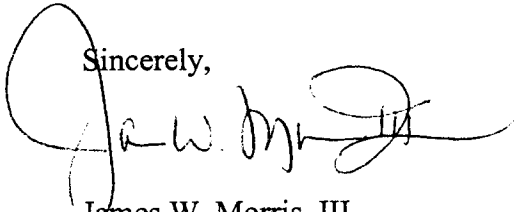
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. W. Morris, III", written over a large, loopy initial "J".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 155987

Enc: Submitted documents

c: Mr. Jerod Flippen
2201 Willow Creek Dr. #363
Austin, Texas 78741
(w/o enclosures)
(w/o enclosures)